

REMARKS

I. Request for Withdrawal of Finality of Rejection

The Amendment filed July 24, 2003 ("the 7/24/03 Amendment") was entitled "Supplemental Preliminary Amendment." The 7/24/03 Amendment evidently crossed in the mail with the 7/21/2003 Office Action. Though the 7/24/03 Amendment in no way purported to be a responsive to an office action, the 7/24/2003 Amendment was treated by the Examiner as a response to 9/10/03 Office Action. It is submitted that such treatment of the 7/24/03 Amendment is in error.

It is submitted that the 9/10/03 Office Action was premature because Applicants have not yet responded to the non-final 7/21/03 Office Action. Moreover, the time for response to the 7/21/03 Office Action has not yet run. Therefore it is respectfully requested that the finality of the rejection be withdrawn. See, MPEP § 706.07(d).

## II. Response to Office Action

### A. Status of the Claims

Claims 1-53 and 56-57 are pending in the present application. Claims 1-45, 50-52, 56, 57 have been allowed. Each of the non-allowed claims will be addressed in turn.

Claims 2-6, 15 and 29 though allowed have been rewritten in independent form. Except as to form, these claims are unchanged and thus should be allowable.

Claim 1 has been amended "obtaining optimum read technique data corresponding to the item." It is submitted that Claim 1 should still be allowable as amended.

Claim 30 has been amended:

A data reading system for reading symbols on items ~~scanned~~ passed through a scan volume by an operator, comprising

a housing;

a data reader disposed in the housing for reading a symbol on an item being passed through the scan volume, and for obtaining symbol orientation data and symbol movement data during ~~operator~~ scanning . . .

It is submitted that Claim 30 should still be allowable as amended.

Claim 50 has been amended at the step of "providing feedback indicative of the operating technique by which the operator handles items at the item handling station." It is submitted that Claim 50 should still be allowable as amended.

Claim 56 has been amended to correct for a grammatical error.

B. Objections to Claims 49 and 53

The Office Action objects to Claims 49 and 53 suggesting that claim language "the group" be replaced with "a group". This objection is respectfully traversed. The MPEP specifies this claim format as an acceptable claim form:

"One acceptable form of alternate expression, which is commonly referred to as a Markush group, recites members as being "selected from the group consisting of A, B and C."

See, MPEP § 2173.05(h). Since the example in the MPEP uses the language "the group" it is submitted that similar language in Claims 49 and 53 should be acceptable.

C. Claims 47 and 48

Claims 47 and 48 have been objected to as depending upon a rejected base claim but indicated would be allowable if

rewritten in independent form. Claim 47 has been rewritten in independent form and thus Claims 47 and 48 should be allowable.

D. Claims 46 and 49

Claims 46 and 49 have been rejected under 35 U.S.C. 102(e) over Walker '787. This rejection is respectfully traversed. Nonetheless, Claim 46 as amended includes, among others limitations, the element

"means for monitoring operating technique of an operator as to how the operator moves items through the detection volume."

In contrast, in Walker '787 it is primarily the verbal aspects of the operator that are recorded, i.e., monitored (See, Col. 7 line 46 et seq.). There is no disclosure in Walker '787 of monitoring how the operator moves items through the detection volume.

Thus it is submitted that Claim 46 is not anticipated by Walker '787. Further it is submitted that a *prima facie* case of obviousness cannot be made as to Claim 46 over Walker '787 alone or in combination with any of the other items of record. Therefore it is submitted that Claims 46 and 49 are allowable.

E. New Claims 58-62

New Claims 58-62 have been added directed to similar combinations as previously presented. It is submitted that Claims 58-62 are supported by the application as originally filed and add no new matter. Further it is submitted that the new claims should be examined upon withdrawal of the finality.

III. Conclusion

It is submitted that Claims 1-53 and 56-62 are allowable and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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By: John A. Rafter, Jr.  
John A. Rafter, Jr.  
Reg. No. 31,653

Customer No. 33451  
STOEL RIVES LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Telephone: (503) 224-3380  
Facsimile: (503) 220-2480  
Attorney Docket No. 51306/708:1